

1986 October 7

[MALACHTOS, J]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

GEORGHIOS MALAIS AND OTHERS.

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF DEFENCE.

Respondent.

(Case No. 210/80).

*Cyprus Army—Promotions—The Army of the Republic (Com-
position, Enlistment and Discipline) Law 8/61, section
5(1)—The competency thereunder as regards promotions
was lawfully delegated by the Council of Ministers to the
5 Minister of Defence (The Statutory Functions (Confer-
ment of Exercise) Law, 1962, section 3(1)*—Factor re-
levant to promotions—Interested parties better in merit
and qualifications—Seniority of applicant's cannot prevail.*

10 By means of the above recourse the applicants
challenge the promotion of the interested parties to the
rank of lieutenant in the Cyprus Army on the following
grounds, namely that the Minister of Defence had no
competency in the matter—the competent organ being
15 the Council of Ministers—that the Minister acted under
a misconception of fact in that he disregarded the appli-
cant's bravery during the Turkish rebellion in 1963 and
the Turkish invasion of 1974, considering the patriotism
shown by the applicants on the said occasions as an
adverse element, and that he acted in a discriminatory
20 manner against the applicants in that he did not consider

* Quoted at p. 1555 post.

objectively the relevant factors, but was influenced by ulterior motives.

Held, dismissing the recourse: (1) The competency of the Council of Ministers under s. 5(1) of Law 8/61 was lawfully delegated under s. 3(1) of Law 23/62 by the Council of Ministers to the Minister of Defence, who, consequently, had competence in the matter. 5

(2) From the material before the Court there is nothing to indicate that any so called "adverse elements" were taken into account or were existent either against the applicants or the interested parties. 10

(3) Eleven of the interested parties are graduates of the Scholi of Evelpidon. This fact renders them by far superior in qualifications to all the applicants. The remaining interested parties have higher qualifications to those of the applicants. Moreover, as it emanates from the service reports all the interested parties are better in merit than the applicants. It follows that any seniority of the applicants cannot prevail. 15

(4) There is no evidence of any discrimination against the applicants or that the respondent was influenced by any ulterior motives. 20

*Recourse dismissed.
No order as to costs.*

Recourse. 25

Recourse against the decision of the respondent to promote the interested parties to the rank of lieutenant in the Cyprus Army in preference and instead of the applicant.

Ph. Valiantis, for the applicant. 30

A. Vassiliades, for the respondent.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicants in this recourse claim a declaration of the Court that the act and/or decision of the respondent, published in 35

the Official Gazette of the Republic of 13.6.80 to promote the fifty-two interested parties to the rank of lieutenant in the Cyprus Army instead of the applicants, is null and void and of no legal effect whatsoever.

5 The applicants are: 1. Georghios Malais, 2. Ioannis Economides, 3. Panayiotis Katsouris, 4. Demos Xenophon-
tos, 5. Kyriakos Pirikkis, 6. Andreas Spyrou, 7. Ioannis
Constantinou, 8. Michalis Paraschou, 9. Costas Hadji
10 Eftychiou, 10. Kyriakos Koudounas and 11. Demetrios
Anastassiou. All the applicants are serving in the Cyprus
Army in the rank of second lieutenant.

Applicants No. 2 Ioannis Economides and No. 7 Ioannis
Constantinou withdrew their recourses during the hearing
and were dismissed accordingly.

15 The facts of the case briefly are as follows:

The General Staff of the National Guard by letter dated
25.5.80 to the Ministry of Defence, recommended for
promotion to the rank of Lieutenant fifty-two officers
holding the rank of second lieutenant, out of those eligible
20 for promotion.

The Minister of Defence considered each and every case
submitted for promotion and approved the promotion of
the fifty-two interested parties from the rank of second
lieutenant to the rank of lieutenant as from 1.6.80. This
25 decision of the Minister of Defence was submitted by him
to the Council of Ministers for approval.

The Council of Ministers approved the said promotions
which were subsequently published in the Official Gazette
on 13.6.80.

30 Hence the applicants filed the present recourse which
is based on the following grounds of Law:-

A. 1. The respondent Minister acted in excess and/or
abuse of power in that the competent organ for appoint-
ment of officers in the Cyprus Army according to section
35 5(1) of Law 8 of 1961 is the Council of Ministers and not
the Minister of Defence.

2. Even if the respondent was acting on the authority delegated to him by the Council of Ministers, such authority is null and void and of no legal effect on the legal principle "Delegatus non potest delegare".

B. Notwithstanding and in further support of the above, 5

1. The respondent acted under a misconception of fact, since:-

- (a) he disregarded the fact that the applicants were superior to the interested parties as regards seniority, experience and qualifications. 10
- (b) he disregarded the fact that the applicants had rendered valuable services and displayed bravery in fighting against the Turkish Cypriot rebels and the Turkish invading forces.
- (c) he disregarded the fact that the applicants or some of them, have served in the rank of lieutenant and/or as company commanders satisfactorily in contradistinction to the interested parties who do not have any such experience. 15
- (d) he misinterpreted the national spirit and patriotism of the applicants which he mistook as an adverse element against them. 20

2. The respondent acted in discrimination as against the applicants as he did not consider objectively the substantial qualifications, experience, seniority and merit of the applicants, but he was influenced by foreign interventions and ulterior motives. 25

It has been argued on behalf of the applicants in respect of the first ground of law in accordance with the Army of the Republic (Composition, Enlistment and Discipline) Law of 1961 (Law 8 of 1961), section 5(1), the competent organ for effecting promotions of officers is the Council of Ministers and not the Minister of Defence and thus, the Minister has acted in excess of power. Moreover, it was argued that the Council of Ministers was not empowered to delegate such powers to the Minister of Defence on the principle of delegatus non potest delegare. 30 35

The Council of Ministers was not empowered to delegate the powers vested in it to another organ without specific statutory authority.

5 Law 23 of 1962, The Statutory Functions (Conferment of Exercise) Law, 1962, section 3(1) provides:

10 "Where by or under any Law or public instrument the Council of Ministers is empowered to exercise any statutory functions the Council of Ministers may, unless by law expressly prohibited from so doing, by a decision in this respect, authorise the appropriate Minister or the appropriate Independent Officer of the Republic or other appropriate Authority in the Republic, to exercise such statutory functions on behalf of the Council of Ministers subject to such conditions, exceptions and qualifications as the Council of Ministers may in such decision prescribe."

15 In the present case the Council of Ministers by its decision No. 4545 of 18/3/65. decided to confer its statutory function of effecting promotions of officers in the Cyprus Army to the Minister of Defence and on the strength of this decision the Minister of Defence effected the said promotions which were subsequently approved by the Council of Ministers in accordance with its above decision.

20 From the above it is clear that the Minister of Defence did not act in excess of power, as these powers were delegated to him in accordance with the law. This ground must, therefore, fail.

25 It was further argued on behalf of the applicants that the respondent acted under a misconception of fact in that he disregarded their superiority, experience, qualifications and bravery during the Turkish rebellion in 1963 and the Turkish invasion of 1974. Such patriotism was misinterpreted and was considered as an adverse element. Furthermore, he failed to take into consideration that the applicants or certain of them, had in the past exercised the duties of a lieutenant and they had thus acquired experience in such rank.

Finally, it was argued that the respondent acted in a discriminatory manner as regards the applicants in that he did not consider objectively the basic factors i.e. of qualifications, experience, seniority and merit of the applicants but was influenced by ulterior motives. 5

It transpires from the comparative tables, which have been produced in court, the contents of which have not been contested, that eleven of the interested parties are graduates of the Scholi of Evelpidon which renders them by far superior to all the applicants. As regards the remaining 41 all have higher qualifications to those of the applicants. 10

It is equally obvious from their service reports that all the interested parties are in merit better than the applicants.

In view of the above, any seniority of the applicants to the interested parties, cannot prevail over the marked higher qualifications and merit of the interested parties and, therefore, I must dismiss this argument also as I find in the circumstances that it was reasonably open to the respondent to promote the interested parties instead of the applicants. 15 20

As regards the so called "adverse elements," allegedly taken into account by the Minister, I must say that from the material placed before me, there is nothing to indicate that any such elements were taken into account by the respondent or were existent either against the applicants or the interested parties. 25

Finally, I find that there is no evidence of any discrimination against the applicants or that the respondent was influenced by any ulterior motives when effecting the sub judice promotions but considered the applicants in the same objective manner as the interested parties. 30

For the above reasons this recourse fails and is hereby dismissed, with no order as to costs.

Recourse dismissed.
No order as to costs. 35